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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,328	08/23/2003	Bernhard Felten	104035/268347	9679
826	7590	06/01/2004	EXAMINER	
<b>ALSTON &amp; BIRD LLP</b> <b>BANK OF AMERICA PLAZA</b> <b>101 SOUTH TRYON STREET, SUITE 4000</b> <b>CHARLOTTE, NC 28280-4000</b>				BUECHNER, PATRICK M
ART UNIT		PAPER NUMBER		
		3754		

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	lu
	10/646,328	FELTEN ET AL.	
	Examiner Patrick M Buechner	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 August 2003.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4 and 6-15 is/are rejected.  
 7) Claim(s) 5 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 23 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/23/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 2/24/2001. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b) (see also MPEP 1895.01(II)).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Castillo et al. (US 5,238,153).

Castillo discloses a dispensing container (1) having a dispensing opening (14) and a plurality of air-admission openings (13, 17). Castillo also discloses a valve system (5) consisting of two valves, the first valve (9) allowing contents to be discharged when the pressure of the interior of the container becomes greater than an external pressure, and the second valve (51a) allowing air to flow into the container when the pressure of the interior of the container becomes less than an external pressure. Castillo discloses the second valve is in the form of a lip seal that closes the air-admission openings. Castillo also discloses the first valve has a closure part (50) that is substantially conical in shape (Figures 1 and 2) and a plurality of flexible crosspieces (unlabelled Figure 2) that inherently contribute to the retention of the closure part in a sealing

position, but are flexible enough to allow the closure part to lift off of the sealing position (Figure 1).

4. Claims 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward (US 2,761,833).

Ward discloses a dispensing container (12) having a dispensing opening (28) and an air-admission opening (15). Ward also discloses a valve system consisting of two valves, the first valve (29) allowing contents to be discharged when the pressure of the interior of the container becomes greater than an external pressure, and the second valve (16) allowing air to flow into the container when the pressure of the interior of the container becomes less than an external pressure. Ward discloses the second valve is in the form of a lip seal that closes the air-admission opening. Ward discloses the container having a circular neck (17). Ward discloses the second valve is located in a sidewall of the neck (Figure 1). Ward discloses the dispensing opening in the neck opposite the container (Figure 1).

5. Claims 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartzman (US 3,705,668).

Schwartzman discloses a dispensing container (10) having a dispensing opening (28) and an air-admission opening (56). Schwartzman also discloses a valve system consisting of two valves, the first valve (36) allowing contents to be discharged when the pressure of the interior of the container becomes greater than an external pressure, and the second valve (60) allowing air to flow into the container when the pressure of the interior of the container becomes less than an external pressure. Schwartzman discloses the first valve has a substantially conical closure part (36) and a plurality of substantially “S-shaped” flexible crosspieces (44) that flex to allow the

first valve (36) to open when the pressure of the interior of the container becomes greater than an external pressure (Figure 2).

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9 and 10 rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in view of Rohr et al. (US 6,378,742).

Ward discloses the elements of claims 9 and 10, as discussed above in 4, with the exception of a plurality of air-admission openings and a sleeve-like lip.

Rohr teaches a valve system having a plurality of air-admission openings (160) closed by a sleeve-like lip seal (184).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide Ward with a plurality of air-admission openings closed by a sleeve-like lip seal as taught by Rohr in order to reduce the amount of time it takes for the interior pressure of the container to equalize with the external pressure.

*Allowable Subject Matter*

8. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:  
The prior art does not disclose or fairly teach the apparatus as claimed including the flexible members being S-shaped.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Por (US 3,878,972).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602. The examiner can normally be reached on 7:00am-4:30pm M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PB



KENNETH BLOMBERG  
PRIMARY EXAMINER